

**FINAL REPORT  
OF THE  
INTERIM STUDY COMMITTEE ON  
ALCOHOLIC BEVERAGE ISSUES**



**Indiana Legislative Services Agency  
200 W. Washington Street, Suite 301  
Indianapolis, Indiana 46204**

**October, 2009**

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# **INTERIM STUDY COMMITTEE ON ALCOHOLIC BEVERAGE ISSUES**

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### **Staff**

Anne Haley  
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Eliza Houston Stephenson  
Attorney for the Committee

Diana Agidi  
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A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

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## **I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES**

The Indiana General Assembly enacted IC 2-5.5-4 (P.L. 94-2008) establishing the Committee as a two year interim study Committee and directing the Committee to study the following topics:

- "(1) Alcohol server training and employee permits for sales clerks in dealer establishments.
- (2) Additional one, two, or three-way permits for restaurants in economic development areas.
- (3) Displaying alcoholic beverages in separate areas in dealer establishments.
- (4) The historic origins of Indiana alcoholic beverage laws and the Twenty-first Amendment to the Constitution of the United States and its place and purpose in the twenty-first century."

Legislative Council Resolution 08-01 assigned the following additional topic to the Committee for study during the 2008 interim session:

- (5) "Sunday sale of microbrewery products for carry-out at Indiana microbreweries."  
(House Resolution 119)

Legislative Council Resolution 09-01 assigned the following additional topic to the Committee for study during the 2009 interim session:

- (6) "Alcohol sale and distribution process in Indiana." (Senate Resolution 60)

## **II. INTRODUCTION AND REASONS FOR STUDY**

The Committee met to discharge its responsibilities under IC 2-5.5-4 and to consider the topics assigned by the Legislative Council.

## **III. SUMMARY OF WORK PROGRAM**

### **2008 Interim Committee**

The 2008 interim committee consisted of the following members:

Sen. Ron Alting, Chairperson  
Sen. Richard Bray

Rep. Trent Van Haaften, Vice-Chairperson  
Rep. Scott Pelath

Sen. James Merritt  
Sen. Timothy Lanane  
Sen. Earline Rogers  
Sen. Vi Simpson

Rep. Phil GiaQuinta  
Rep. Matt Bell  
Rep. Jack Lutz  
Rep. Thomas Dermody

The Committee met three times during the 2008 interim session on the following dates:

August 15, 2008.

August 20, 2008.

October 15, 2008.

### **2009 Interim Committee**

The 2009 interim committee consisted of the following members:

Rep. Trent Van Haaften, Chairperson  
Rep. Scott Pelath  
Rep. Phil GiaQuinta  
Rep. Matt Bell  
Rep. Jack Lutz  
Rep. Jackie Walorski

Sen. Ron Alting, Vice-Chairperson  
Sen. James Merritt  
Sen. John Waterman  
Sen. Robert Deig  
Sen. James Arnold  
Sen. Greg Taylor

The Committee met three times during the 2009 interim session on the following dates:

September 9, 2009.

September 15, 2009.

October 20, 2009.

### **IV. SUMMARY OF TESTIMONY**

For a more detailed account, minutes for the Committee can be accessed from the General Assembly homepage at <http://www.in.gov/legislative/>.

The first reference to a witness includes name of the witness and the person or organization the witness represents. For brevity, any subsequent reference includes only the name of the witness. A witness list is included at the end of the report.

## **2008 Committee Testimony**

**August 15, 2008 meeting**

### **(1) Additional one, two or three-way permits for restaurants in economic development areas**

#### **Current law**

The term "one-way permit" means a beer retailer's permit issued to a permittee (IC 7.1-1-3-27). The term "two-way permit" means the combination of a beer retailer's permit and a wine retailer's permit issued to a permittee (IC 7.1-1-3-48). The term "three-way permit" means the combination of a beer retailer's permit, a liquor retailer's permit, and a wine retailer's permit issued to a permittee (IC 7.1-1-3-47). For purposes of IC 7.1, a "retailer" sells alcoholic beverages by the drink on the premises of the licensed establishment.

The number of retailer permits that may be issued to locations within a city or town is limited by a quota (IC 7.1-3-22-3 and IC 7.1-3-22-6) that is based upon the population of the municipality. IC 7.1-3-20-16 allows the Alcohol and Tobacco Commission (ATC) to issue additional retailer permits to certain economic development areas that are not counted toward the municipality's quota.

#### **Testimony**

#### **Permits and economic development and revitalization**

Mr. Matt Brase, Indiana Association of Cities and Towns, and Ms. Tanya Galbraith, Town Manager of McCordsville, said that restaurant permits are necessary for developing and revitalizing retail areas. Dr. Thomas Van Horn, Planner/Project Manager for the City of Lafayette, appearing before the Committee and Mr. Matt Murphy, Economic Development Director of the City of Valparaiso, in a letter to the Committee, said that restaurant permits contributed to the success of revitalization areas in their cities. Mr. Tom Klein, Town Manager of Avon, said that Avon's growth has created a demand for additional restaurant permits. Mr. Mark Palmer, attorney, Taft Stettinius & Hollister LLP, on behalf of Al Krygier, Schererville, said a distinction should be drawn between issuing additional permits to revitalize a distressed economic area and issuing additional permits to satisfy a demand caused by an area's rapid economic growth. Ms. Lisa Hutcheson, Indiana Coalition to Reduce Underage Drinking, said that a community's characteristics must be considered before issuing additional permits; statistics show that there are more alcohol sales in low income areas, accompanied by increased crime, violence, and impaired driving.

#### **Existing restaurant permit prices**

Mr. Bob Super, Precision Development, LLC, said if there are no permits available, new businesses pay high prices for existing permits. Mr. Mark Palmer said that permit holders rely on the sale proceeds of their permit to fund their retirement and that banks often issue permit holders credit lines based upon the permit's value. Mr. Palmer said that issuing additional permits devalues existing permits; previous legislation allowed new permits to be issued for as little as \$1,000. In a letter to the



Committee, Rep. Craig Fry expressed his concern that granting discounted restaurant three-way permits for economic development areas would reduce the value of existing restaurant permits, and proposed excluding Mishawaka at least temporarily from any proposed legislation on this issue.

### **Quota as the basis for permit distribution**

Mr. Don Marquardt, Indiana Licensed Beverage Association, said that he supports the current quota system. Mr. Tom Klein said that the current quota system, which relies upon decennial census figures, does not accurately reflect the current population in a metropolitan statistical area and that the quota disregards the population of the adjacent incorporated areas that use a municipality's services. Mr. Bob Super said the use of residential population figures doesn't recognize that people travel long distances between their home and their place of business and that highway traffic counts afford a more accurate measure of the activity surrounding a municipality.

### **Changing the quota/ permit distribution process**

Witnesses offered the following suggestions for changing the permit distribution process:

- Mr. Bob Super said that other states give municipalities the authority to develop standards for issuing permits and restricting the number of permits.
- Mr. Matt Brase suggested: (1) issuing municipalities additional permits in anticipation of the next census; (2) creating a statewide formula for issuing additional permits; (3) involving local redevelopment commissions in defining "economic development area" for purposes of permit distribution; and (4) looking at Michigan's law (MCL 436.1521a) which distributes permits based upon population and the amount of investment.
- Mr. John Livengood, Restaurant and Hospitality Association of Indiana, suggested creating a county-wide quota that would account for a municipality's suburban population. He also suggested creating a tavern permit that is separate from a restaurant permit.
- Mr. Don Marquardt said that existing permit holders bought riverfront development permits and then sold their existing permits for a profit. Mr. Matt Brase suggested restricting economic development permits from being sold or transferred. Mr. Mark Palmer said that his clients are concerned about the statutory mandate that some economic development permits are attached to the permit premises.
- Mr. John Livengood suggested allowing cities or economic development areas to purchase additional alcohol permits at fair market value. Mr. Livengood said that new permits should be sold at auction and available to everyone, not just developers. Mr. Don Marquardt suggested allowing a developer to buy a permit at fair market value and receive a local or state tax break or incentive to compensate for the cost of the permit.

### **Considerations in determining the value of restaurant permits**

(Note: The following testimony was received by the Committee at the meeting on October 15,

2008. Since the testimony pertains to restaurant permits in economic development areas, the testimony is being presented here.)

Mr. Jeffrey McKean, McKean Law Firm, and Mr. Gregory T. Genrich made the following points regarding factors affecting the value of restaurant permits:

- Increased population and the clustering of businesses increases the demand for permits.
- A permit's price is affected by the timing of the purchase (a buyer with a three year window for obtaining a permit will get a lower price than a buyer who needs one right away). Permit prices are location specific.
- A restaurant permit sold with a business is difficult to value because the value is tied in with the goodwill of the business.
- The law does not allow permits to be bought and held for speculative purposes.

The LSA attorney distributed to the members information compiled by the National Conference of State Legislators regarding the quota systems of other states. LSA also distributed information regarding efforts of the following states in dealing with the issue of permits outside the quota:

(1) South Dakota adopted legislation (SB 126, 2008) to allow municipalities and counties to issue an unlimited number of new liquor permits. Before purchasing one of these new permits, a buyer has to first consult a county-created registry to see if there is an existing license for sale. If there are no existing licenses for sale on the registry, or the buyer is unable to purchase a license on the registry for the current market price and on terms satisfactory to the buyer and seller, then the county can sell the buyer a new license for the current fair market price (current fair market price is defined as the documented price of a license most recently sold between January 1, 2003 and January 1, 2008, through an arms length transaction, less the value of any real or personal property included in the transaction).

(2) Idaho's governor has established a task force to study the quota and license distribution. Legislation is planned for the 2009 session based on the findings of the task force. *Update: The 2009 Idaho legislation (SB 1128) would have transferred the responsibility for issuing licenses from the state to cities and counties for lodging establishments and restaurants. The bill passed the Senate but was defeated in the House.*

(3) California recently adopted legislation (Assembly Bill No. 2266, 2008) to authorize five new additional permits outside the quota for the Napa Valley.

## **(2) Sunday sale of microbrewery products for carryout at Indiana microbreweries**

### **Current law**

Indiana farm wineries are allowed to make Sunday carryout sales (IC 7.1-3-12-5). Indiana microbreweries are not allowed to make Sunday carryout sales.

### **Testimony**

#### **Sunday carryout**

Mr. Mark Webb, lobbyist and attorney for the Brewers of Indiana Guild, and Mr. John Hill, Broad Ripple Brewpub and Brewers of Indiana Guild, said that microbreweries only want to sell their own beer out of their own breweries on Sunday for at home consumption, the same right that farm wineries have.

#### **Microbreweries are businesses**

Mr. Mark Webb said that 25 of Indiana's 26 microbreweries have restaurants and employ 1,000 people. Mr. Greg Emig, Lafayette Brewing Company and Brewers of Indiana Guild, discussed his brewery's contribution to revitalizing downtown Lafayette and the other ways it has given back to the community. Representative Matt Bell, Committee Member, suggested that the legislature may want to consider supporting microbreweries in the manner that wineries receive state support through the wine grape market development fund.

#### **Sunday carryout aids tourism**

Mr. Mark Webb said that Indiana's microbreweries are nationally and internationally known, are award winning, and are tourism sites. Mr. Penn Jensen, Upland Brewing Company and Brewers of Indiana Guild, and Mr. Ted Miller, Brugge Brasserie and Brewers of Indiana Guild, said that not having Sunday carryout sales negatively affects their ability to promote weekend tours, because tourists are not allowed to buy the products they taste on the tour.

#### **Amount of carryout**

Mr. Mark Webb said that current law limits the amount of beer microbreweries can sell for carryout to not more than a keg, but most customers purchase six packs or half gallon "growlers" after touring the brewery. Mr. Jeff Eaton, Barley Island Brewing Company and Brewers of Indiana Guild, said he has been contacted on Sunday by people wanting to purchase a keg.

#### **Sunday sales: grocery stores, package liquor stores**

Mr. Joe Lackey, Indiana Grocery and Convenience Store Association, said that his association does not object to Sunday sales by microbreweries. Mr. John Livengood said that package liquor stores do not want Sunday sales and are concerned Sunday sales will eventually be granted to package liquor stores. Mr. Grant Monahan, Indiana Retail Council, Inc., discussed the creation of a group (Hoosiers for

Beverage Choices) launching an effort to petition the General Assembly for cold beer sales and Sunday sales of alcohol in drug, grocery, and convenience stores.

## **Illegal consumption/DUI**

Ms. Elizabeth Spiller, representing the victim of a drunk driver, said the Committee should consider how people are affected by these issues in addition to business profits. Mr. Joe Lackey said that since restaurants are allowed to sell alcohol on Sunday for consumption on the premises, the state seems to find it acceptable to drink and drive but not acceptable to purchase alcoholic beverages to consume at home. Mr. John Hill said he has never had an underage drinking violation in the 18 years he has had his business.

## **August 20, 2008 meeting**

### **(3) Alcohol server training and employee permits for sales clerks in dealer establishments.**

#### **Current law**

Package liquor store managers and clerks are required to obtain alcohol server training (see IC 7.1-3-1.5-1 and IC 7.1-3-1.5-2) and are required to have an employee permit (IC 7.1-3-18-9). Package liquor store clerks must be 21 years of age. In contrast, grocery store or drug store sales clerks are not required to have alcohol server training or an employee permit. Grocery store and drug store clerks may ring up alcohol sales if they are at least 19 years of age.

#### **Testimony**

##### **In-house training**

Mr. John Livengood, Indiana Association of Beverage Retailers, said that his association prefers in-house alcohol server training by programs such as ServSafe, instead of the ATC's training program. Mr. Livengood said that ServSafe is a national program that can be tailored for Indiana and that relies upon scientific data. Mr. Livengood suggested specifying in statute the programs that businesses may use for training their employees, in addition to allowing the ATC to approve programs. Mr. Joe Lackey said that the extensive in-house training that his clients' employees receive is sufficient. Ms. Tammy Loew, Indiana Coalition to Reduce Underage Drinking, said that training is necessary because research shows that it reduces youth access to alcohol and impaired driving. Sen. Alting said that the ATC indicated that it would implement alcohol server training by January 2009.

##### **Minors/false IDs**

Mr. Grant Monahan said that use of false IDs by minors to purchase alcohol is the biggest problem facing retailers. Mr. Joe Lackey said that all sales clerks should check a buyer's identification and suggested making drivers' license bar codes readable by cash register scanners. Mr. Lackey said that his clients' policy is to terminate an employee who sells alcohol to a minor.

With regard to other states, Mr. John Livengood said that Alaska allows a retailer to sue a minor who enters the licensed premises or shows fraudulent identification. In Texas, if a clerk who receives server training sells alcohol to a minor, the burden shifts from the owner to the clerk. Mr. Livengood suggests amending the law to allow sellers to confiscate fraudulent IDs.

### **Employee permits**

Mr. Grant Monahan and Mr. Joe Lackey said that employee permits should be eliminated. Mr. Monahan said that obtaining an employee permit only requires completing a form and paying a fee. Mr. Lackey said that employee permits were created to generate money for excise officers' retirement funds.

### **(4) Displaying alcoholic beverages in separate areas in dealer establishments**

#### **Separate display not needed**

Mr. Grant Monahan said that this issue is an attempt by package liquor stores to restrict their competitors and require them to spend millions of dollars in remodeling costs. Mr. Monahan said that how a retailer lays out the store to please his customers is a free market issue. Mr. Monahan said that the issue is not access to alcohol but illegal sales, and retailers are already employing security measures such as video surveillance, security bottle caps, exit alarms, requiring a clerk to obtain the product, cash register prompts requiring an ID check, requiring ID checks of purchasers of who appear to be under 27 years of age, and terminating any employee who sells alcohol to a minor. Mr. Monahan and Mr. Joe Lackey said that if a customer is concerned with a store's alcohol display they should complain to the store manager, because retailers want to please their customers.

Mr. Monahan said that the legislature should look at minors' access to alcohol at sporting events, parties, and home, because 40% of teens say that they access alcohol through their parents and other adults. Mr. Lackey said that It does not make sense that it is acceptable for minors to see adults drinking but not acceptable to see alcoholic beverages on the shelf at a store. Mr. Monahan and Mr. Lackey support allowing children to accompany parents in package liquor stores, since the problem is illegal sales to minors, not access.

#### **Separate display necessary**

Ms. Tammy Loew said that alcohol should be separated from other products in a store to reduce youth access to alcohol. Dr. Sigurd Zielke, adolescent clinical specialist at Fairbanks Hospital, said in written testimony submitted to the Committee that simply seeing alcohol sets off brain-based cravings for alcohol, and that youths who binge drink hard liquor report that they acquired it by stealing it. Mr. Jim Killen, speaking on his own behalf, said that the issue of separate display is a health issue and urged state public health officials to testify for the Committee.

### **Information from other states**

The LSA attorney distributed copies of the following statutes and ordinances from other states

that require alcohol in a grocery store to be displayed separately from other products:

New Mexico Statutes Annotated §60-6B-19 Title 15, Chapter 10, Part 2 and Title 15, Chapter 10, Part 52 of the New Mexico Administrative Code.

North Dakota Century Code, Title 5, Chapter 5-02.

Wyoming statutes §12-1-1-01; §12-5-201; §12-5-203.

Lincoln County, Nevada Ordinance

City of Dekalb, Illinois Ordinance

### **October 15, 2008 meeting**

#### **(5) The historic origins of Indiana alcoholic beverage laws and the Twenty-first Amendment to the Constitution of the United States and its place and purpose in the twenty-first century.**

#### **Indiana's three tier system and direct wine shipping**

##### **(A) Indiana's three tier system.**

##### **The role of the wholesaler in the three tier system**

Mr. Marc Carmichael, Indiana Beverage Alliance, explained that before Prohibition suppliers coerced retailers into selling their products and some suppliers also acted as retailers. After Prohibition, the wholesaler tier was created to separate the supplier and the retailer and regulate sales by ensuring retailers are licensed, preventing coercion of retailers, and collecting excise taxes. Mr. David Heath, Chairman, Alcohol and Tobacco Commission, said that wholesalers are a necessary mechanism and the lowest cost means of regulation. Mr. Heath said that the three tier system creates economic separation between the tiers, ensures an orderly market in the sale and distribution of alcohol, aids in the collection of excise taxes, and promotes moderate and legal alcohol consumption. Mr. Jim Purucker, Wine and Spirit Wholesalers of Indiana, said that all states have some form of the three tier system-- some (like Indiana) use a licensed wholesaler for the middle tier, while in "control states" the state is the wholesaler. Mr. Phil Terry, Monarch Beverage Company, said that the three tier system is relevant today because it is transparent and accountable, making it easy for manufacturers to quickly locate defective products through their wholesalers and in turn through their retailers. Mr. John Livengood said that package liquor stores were also created a result of the regulatory scheme after Prohibition to perform face to face sales of alcohol.

##### **Continued need for wholesaler tier**

Mr. Marc Carmichael said that polls of registered voters commissioned by the Indiana Beverage Alliance show that Indiana has a conservative view toward alcohol policy, indicating that a majority believe the primary role of the state is to ensure responsible consumption and that selling alcohol directly

to the consumer over the Internet would increase underage drinking. Mr. John Livengood said that the three tier system provides good service and price to retailers, adding that most large retailers do not want to distribute alcohol on their own, but if they do, prices for the smaller retailers will go up. Mr. Livengood said that wholesalers are good corporate citizens that contribute to their communities.

### **(B) Direct wine sales and shipping.**

#### **Growth of Indiana farm wineries**

Ms. Lisa Hays, Indiana Wine and Vineyard Association, said that in 2007, Indiana wineries produced 800,000 gallons of wine to make Indiana the tenth largest wine producer in the U.S. In 2008, Indiana had over 400 acres of vineyards. Indiana's 37 wineries collected \$400,000 in excise tax and \$2.8 million in sales tax in 2007. Indiana wineries have won national and international awards and are a popular tourist destination.

#### **Direct wine shipping litigation history**

Mr. Fred Biesecker, attorney, Ice Miller, made the following points:

- *Granholm v. Heald* involved Michigan and New York statutes favoring in-state wineries. In *Granholm*, the U.S. Supreme Court found the three tier system to be legitimate and that a state may not grant preferences to local wineries.
- In *Baude v. Heath*, the U.S. District Court struck down as unconstitutional two provisions in the Indiana direct shipping law. One provision prohibited the holder of a direct wine seller permit from holding a wholesaler permit. The second provision required a consumer to provide the seller with identification and proof of age in an initial face-to-face transaction, before the consumer can have wine shipped directly by the seller.
- *Baude v. Heath* was appealed and the U.S. Court of Appeals for the 7th Circuit agreed that the wholesaler provision is unconstitutional, but reversed the District Court as to the face-to-face provision. The court has indicated that the further away from the three tier system the law travels, the less likely the court will defer to the legislature's judgment.
- December 9, 2008 is the deadline for plaintiffs to file an appeal in *Baude* with the U.S. Supreme Court. There are two cases in the U.S. Court of Appeals for the 6th Circuit that involve the face-to-face requirement. If the decisions in these cases conflict with the 7th Circuit's decision in *Baude*, this may be one reason why the U.S. Supreme Court would decide to hear *Baude*.

*Update: The U.S. Supreme Court declined to hear the appeal in Baude on May 18, 2009.*

#### **Negative effect of direct shipping restrictions on farm wineries**

Ms. Lisa Hays said that from 1971 until 2005, wineries could sell and ship directly to retailers and consumers in addition to selling wine in their tasting rooms. In 2005 (following *Granholm*), the ATC prohibited wineries from making direct shipments to Indiana consumers. In 2006, the legislature

prohibited wineries from selling directly to retailers and restricted wineries to shipping only 3,000 cases per year to all Indiana customers, thereby reducing Indiana wineries' shipping totals by at least 2/3. Mr. Larry Satek, Satek Winery, said that Indiana wineries' production decreased from 800,000 gallons in 2007 to 740,000 in 2008, affecting 20 to 30 jobs.

Ms. Hays said that Indiana wineries' 2009 legislative proposal is to: (1) provide third party verification as an alternative to the face-to-face requirement; (2) increase the direct seller shipping limit to 10,000 cases; (3) allow a farm winery permit holder to hold a 50% ownership interest in a micro-wholesaler permit; and (4) give wineries back their wholesaler privileges by allowing them to sell not more than 2,000 gallons (833 cases) to retailers.

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### **The face-to-face requirement**

#### **Current law**

IC 7.1-3-26-6 provides that a seller may only sell and ship wine directly to a consumer *if the consumer has provided in an initial face to face transaction at the seller's place of business*, the consumer's personal information (name, address, telephone), proof of age, and a verified statement that the consumer meets the statutory requirements.

#### **Electronic age verification as an alternative to the face to face requirement**

Mr. John Keeler, Baker and Daniels, representing the Wine Institute, said that the face to face requirement burdens wineries, because it requires consumers to travel to a winery before they can have wine shipped to them. Ms. Lisa Hays said that only Indiana, Kansas, and Arizona have a face-to-face requirement (Kentucky's was invalidated on appeal) while Michigan, Ohio, and Georgia require electronic age verification. Ms. Hays said that Michigan, in adopting the electronic age verification requirement, said that the wineries should not bear the liability for collecting and maintaining consumer's identification documents. Mr. Allen Dale Olson, VinSense, Inc., said that his consumer advocacy group's goal is to eliminate the face-to-face requirement, enabling Indiana consumers to purchase wine electronically from producers and retailers. Ms. Hays said that Indiana retailers, dealers, and microbreweries can deliver directly to a consumer and there are no statutory safeguards in place to prevent minors from obtaining access to alcohol.

#### **Direct wine shipping and minors**

Mr. John Keeler said that minors usually get alcohol from parents and friends and by using false IDs, and that it is unlikely that they would order a case of expensive wine and wait a week for it to arrive. Mr. Mark Easley, Easley Winery, suggested making alcohol education part of the educational process. Ms. Lisa Hays said there have been no access to minor violations for Indiana farm wineries for the last five years and that states that have direct shipment have few, if any, problems. Ms. Hays said that the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport*, which held that federal law preempts state



regulation of common carriers, would probably prevent the state from legislating commercial drivers license penalties for common carrier drivers who deliver alcohol to minors.

### **Direct wine shipping and collection of excise taxes**

Mr. John Keeler said that there is no indication that out of state wineries would fail to pay state excise taxes any more than in-state wineries.

### **Accessing small batch wines through direct shipping**

Mr. John Keeler said that the three tier system works well for the sale of mass produced commodities like Gallo or Budweiser, but wine produced in limited quantities is difficult for the system to handle, explaining that there are over 40,000 wine labels produced today. Mr. Richard P. Hofstetter, VinSense Inc., said that his group wants to open up the market to 95% of the wineries that Indiana consumers can't purchase products from because the wineries are too small to be carried by a wholesaler. Mr. Kenneth Harker, Jr., VinSense Inc., explained that his group's proposal adds enough economic cost into the purchase of a direct shipped product that it is unlikely that it will supplant the mass marketing of the wholesaler. Mr. Harker said that some wineries produce a label in such small quantities that it is not cost effective for them to mass market it. Mr. Phil Terry said that some small batch wines produced by out of state wineries are not available to wholesalers because the supply is self-distributed by the winery or shipped directly to the consumer.

## **2009 Committee Testimony**

### **September 9, 2009 meeting**

#### **(6) The ATC's classification of dealer permits for purposes of the quota provisions under IC 7.1-3-22-4.**

### **Current law**

The dealer permit quota statute (IC 7.1-3-22-4) allocates dealer permits to municipalities by their population. Although IC 7.1-3-22-4 refers only to "dealer permits", the ATC categorizes dealer permits issued to grocery stores as a "grocery store permits" and permits issued to drug stores as "drug store permits".

### **ATC administration of the dealer permit quota**

Mr. Alex Huskey, Superintendent, Indiana State Excise Police, said that since the 1970's, the ATC has interpreted IC 7.1-3-22-4 to mean that for each one dealer permit the statute allocates to a municipality, the municipality is really entitled to two dealer permits-- one grocery store permit and one drug store permit. Mr. Ed Dunsmore, Executive Secretary, Hearing Judge, ATC, said the ATC's determination as to whether there are permits available under the quota happens early in the permit application process. If the ATC determines there are no available permits, the application is never forwarded to the local alcoholic beverage board for

consideration.

**(7) Evaluating the population factors that apply to the issuance of alcoholic beverage permits, particularly issues pertaining to the issuance of a three-way permit to a restaurant in a city or town with a population of less than 25,000 under IC 7.1-3-22-3.**

**Current law**

The statutory definition of one way, two way, and three way permits is located in the Current Law section on page 3 of this report.

The retailer (restaurant and bar) permit quota statute is located at IC 7.1-3-22-3 and IC 7.1-3-22-6 and allocates permits based upon municipal population. IC 7.1-3-20-16 allows the ATC to issue additional restaurant permits to certain economic development areas that are not counted toward the municipality's quota. IC 7.1-3-20-11.5 allows the ATC to issue a three-way permit outside the quota to a restaurant located in a city or town that has a population of less than 20,000, if the applicant already has a one-way or a two-way permit.

**Clarksville economic development**

Mr. Rick Dickman, Redevelopment Director, Town of Clarksville, said that Clarksville cannot obtain commitments from national chain restaurants to locate in the area, because Clarksville does not have any three way permits available under the quota. Purchasing an existing license in the area can cost more than \$100,000. Clarksville has several unused one and two way permits which could be used to obtain three way permits under IC 7.1-3-20-11.5 if the statute applied to Clarksville. Mr. Dickman said in previous legislative sessions they have sought to include Clarksville by amending the population parameters of IC 7.1-3-20-11.5 to apply to cities or towns having a population of less than 25,000.

**Schererville economic development project**

Mr. Bob Super said that the unavailability of alcoholic beverage permits at a reasonable cost has hurt the Oak Street Commons project--a coordinated public/private initiative to create an economic development corridor while improving environmental obsolescence and correcting infrastructure defects. Mr. Super said the problem with the current quota is that it only takes into consideration residential population without considering the other two factors that drive demand: (1) vehicle traffic; and (2) daytime office and business population. Mr. Super said that other states make it easier and less costly to obtain alcoholic beverage permits.

**Distribution of alcoholic beverage licenses in Marion County**

Ms. Nancy Beals, Drug Free Marion County, said that the ATC treats neighborhood developments as unincorporated areas for purposes of the license quotas, resulting in a proliferation of licenses and spotty development. She described an initiative brought in San Diego, California, to allow municipalities to control the number of alcohol licenses in their communities.

## **Independent restaurants vs. national chain restaurants**

Mr. Chris Clifford, owner, Harry and Izzy's Restaurant, described how independent restaurants are at an economic disadvantage in competing with national chain restaurants for alcohol permits. Mr. Clifford offered two suggestions for fixing the inequity: (1) set aside a percentage of available alcoholic beverage permits for Indiana residents; or (2) discount permits for Indiana residents.

## **(8) Mandating liquor liability insurance to be carried by bars and taverns**

### **Current law**

Indiana's Dram Shop Liability Act (IC 7.1-5-10-15.5) imposes civil liability for knowingly furnishing alcohol to a visibly intoxicated person whose intoxication causes injury to persons and property. Indiana law does not require an establishment to obtain liquor liability insurance.

### **Mandatory liquor liability insurance**

Witnesses made the following points about mandatory insurance:

- Mr. Allen Messer, President and CEO of Illinois Casualty Co., J. Lee McNeely, attorney, and Tom Hastings, Indiana Trial Lawyers Association, discussed how Indiana does not require liquor liability insurance or proof of financial responsibility to ensure that dram shop liability claims are paid.
- Ms. Lisa Hutcheson, Indiana Coalition to Reduce Underage Drinking, said that establishments that have liquor liability coverage are more likely to have server training and take other precautions.
- Mr. Don Marquardt, Indiana Licensed Beverage Association, said that research is needed to determine whether the number of unpaid liquor liability claims warrants mandatory liquor liability insurance. Furthermore, the ATC should do more to educate businesses on the benefits of obtaining insurance and insurance companies should do more to sell to businesses on liquor liability coverage.

### **Liquor liability caps**

Mr. John Livengood, Indiana Restaurant Association, and Mr. Tom Hastings said that if insurance or proof of financial responsibility is required, liability caps also need to be in place in order to make insurance affordable.

### **High risk coverage**

The Committee discussed the effect of a law mandating liquor liability coverage on a

business that incurs dram shop claims. The Committee discussed how these businesses would have to obtain high risk coverage or close the business if coverage is unavailable.

### **Information regarding other states**

The LSA attorney distributed copies of the following statutes from other states requiring businesses to have liquor liability insurance or provide proof of financial responsibility:

Alabama Administrative Code rule 20-X-5-.14

Hawaii Revised Statutes §281-31(q)

235 Illinois Compiled Statutes 5/6-2; 235 Illinois Compiled Statutes 5/6-21

Iowa Code Annotated §123.92; Iowa Administrative Code §185-5.8(123)

Massachusetts General Laws Annotated 138 § 67

Michigan Compiled Laws Annotated 436.1803

Minnesota Statutes Annotated §340.409

New Hampshire Revised Statutes §178:5

Oregon Revised Statutes §471.168

Utah Statutes §32A-10-202 (on premise beer retailer); §32A-5-102 (club); §32A-4a-202 (resort license); §32A-4-202 (airport lounge); §32A-4-102 (restaurant liquor license); §32A-4-402 (on premise banquet license); §32A-4-303 (limited restaurant license)

### **(9) Implementing uniform closing hours for each day of the week**

#### **Current law**

IC 7.1-3-1-14 allows bars and restaurants to sell alcoholic beverages from 7 a.m. to 3 a.m., Monday through Saturday and 10 a.m. to 12:30 a.m. on Sunday. If New Year's Eve falls on a Sunday, IC 7.1-3-1-14 allows bars and restaurants to sell alcoholic beverages from 10 a.m. to 3 a.m.

#### **Sunday operating hours and tourism**

Mr. John Livengood, Mr. Don Marquardt, and Mr. Chris Clifford discussed how visitors attending conventions, sporting, and other events on Sunday are upset that they are unable to buy alcoholic drinks in the bars and restaurants after 12:30 a.m.

## **(10) Election day sales**

### **Current law**

IC 7.1-5-10-1 prohibits the sale of alcoholic beverages:

"(3) On primary election day, and general election day, from 3:00 o'clock in the morning, prevailing local time, until the voting polls are closed in the evening on these days.

(4) During a special election under IC 3-10-8-9 (within the precincts where the special election is being conducted), from 3:00 o'clock in the morning until the voting polls are closed in the evening on these days."

### **ATC enforcement of IC 7.1-5-10-1**

Mr. Alex Huskey said that after the ATC receives notice from the Secretary of State's Office of an election, the ATC posts the notice on its webpage. In an area where there is no election (such as a municipality that doesn't have any contested races), businesses are allowed to sell alcoholic beverages. Areas that have satellite voting offices are allowed to sell alcoholic beverages on the days satellite offices are open before an election day.

## **(11) Sunday sales of alcoholic beverages for carryout**

*Note: The reference to "Sunday sales" in this section refers to sales of alcoholic beverages for carryout on Sunday, not sales by the drink on the premises of a licensed establishment such as a bar or a restaurant.*

*"Big box stores", according to the American Heritage Dictionary of Business Terms, describes a very large retail store with floor space of 50,000 square feet or more. Wal-Mart, Costco, and Target are among those stores considered big box stores.*

### **Current law**

IC 7.1 does not allow alcoholic beverage dealers (package liquor, grocery stores, and drug stores) to sell alcoholic beverages for carryout on Sunday.

### **Sunday sales means consumer convenience and increasing revenue**

Witnesses made the following comments supporting Sunday sales:

- Senator Phil Boots said that Indiana is one of 14 states prohibiting Sunday carryout sales and is one of three states prohibiting Sunday carryout sales while allowing sales by the

drink on Sunday.

- Sen. Boots, Mr. Grant Monahan, and Mr. John Elliott, Public Affairs Manager, Kroger Central Division said that allowing Sunday sales would promote customer convenience, because Sunday is the second busiest shopping day of the week.
- Indiana businesses and the state would also gain revenue lost by Indiana residents shopping in bordering states on Sunday to purchase alcoholic beverages and also groceries, gas, and other products. Mr. Monahan estimated that the state loses \$9 million in sales tax and excise tax due to the Sunday sales ban.
- Mr. Matt Norris, Director, Hoosiers for Beverage Choices, explained that Hoosiers for Beverage Choices, a statewide grassroots coalition of citizens in support of changing Indiana's Sunday sales prohibition, has received approximately 65,000 signatures as a result of their online and in-store petition drive.

### **Cold beer sales**

Sen. Phil Boots and Mr. John Elliott said that package liquor stores charge customers a premium for cold beer, so allowing grocery, convenience, and drug stores to sell cold beer would provide price competition. Mr. Elliott said that it is fundamentally unfair for the legislature to create and protect package stores' monopoly on cold beer sales.

Mr. John Livengood, Indiana Association of Beverage Retailers, said that package stores do not have a monopoly on cold beer, because taverns are allowed by law to sell cold beer for carryout. Mr. Jerry Corliss, Chalet Party Shoppe, said that 60% of his sales are beer sales and 80% of his beer sales are cold beer sales, so allowing other stores to sell cold beer would put 4 of his 6 stores out of business.

### **Negative effect of Sunday sales on package stores**

Witnesses made the following comments in opposition to Sunday sales:

- Mr. John Livengood said that Sunday sales is another turf battle by big box stores, grocery stores, and convenience stores to put most package stores out of business and deregulate the sale of alcohol. Mr. Livengood said that Sunday sales would not increase revenue for package stores, but spread out existing revenue over seven days.
- Mr. Ronald Culp, owner, Elmwood Liquors, said that package stores have to compete against big box stores that use alcohol as loss leaders. Mr. Culp said that Sunday sales would result in a transfer of market share to businesses based outside Indiana, thereby removing control from local businesses that are more responsive to customers.
- Mr. Jerry Corliss said that allowing Sunday sales would reduce the value of existing package store permits.

## **Price controls**

Committee discussion ensued regarding whether grocery stores and big box stores would use alcoholic beverages as a loss leader, necessitating minimum price controls for alcoholic beverages similar to those in place for tobacco. Mr. Grant Monahan said that the Indiana Retail Council would oppose price controls because retailers know best how to price items and consumers want the best price.

## **Role of the package store**

Mr. Randy Zion, representing package liquor stores, said that the Indiana legislature created package stores to be the stewards of control. He said that the following differentiate package stores from other stores selling alcoholic beverages:

- Package stores sell only alcoholic beverages and a few related products.
- A person must be at least 21 years of age to enter a package store. This allows the excise police to stand outside and to have probable cause to card anyone entering the store.
- Package stores only employ clerks who are at least 21 years old. Soon these clerks will have server training approved by the ATC.
- Package stores are owned and managed by Indiana residents only.

Mr. John Livengood played a video for the Committee that addressed the benefits of package stores, including a greater variety of alcoholic beverage products and knowledgeable staff who can help customers select wines and other products and prevent unlawful sales to intoxicated persons and minors. Mr. Jerry Corliss and Mr. Randy Zion said they oppose the legislature expanding the types of non-alcoholic beverage products that package stores can sell, because package stores aren't set up to sell other products and can't compete with big box stores on these products.

## **Alcohol deregulation**

Ms. Pamela S. Erickson, Public Action Management, said that normal business practices can't be used for marketing alcoholic beverages or social harm will result. For instance, a normal business plan would include marketing to frequent buyers (frequent buyers of alcohol include heavy drinkers and alcohol abusers), providing discounts to gain new customers (discounts encourage heavy alcohol use), and advertising to young people (encouraging present and future alcohol use among young people). She said that any change in the alcohol marketplace should be done with caution. Ms. Erickson discussed the United Kingdom's deregulation of alcohol and the resulting increase in alcohol consumption, abuse, and serious alcohol related health problems as detailed in *The Dangers of Alcohol Deregulation: the United Kingdom Experience* at [www.pamaction.com](http://www.pamaction.com)

## **The effect of repealing Sunday sales laws**

### **No negative effect**

Dr. David J. Hanson, Ph.D., Professor Emeritus of Sociology, State University of New York, Potsdam, said that a study done by the University of Georgia and Clemson University found that Sunday package sales do not increase alcohol related traffic crashes or fatalities. He said that other research shows that Sunday sales of alcohol may reduce heavy drinking on Saturdays, resulting in a health benefit. Dr. Hanson discussed the inadequacies of a 1995 New Mexico study that found that New Mexico's repeal of its Sunday carryout sales ban resulted in a rise in alcohol related crashes and fatalities.

### **Negative effect**

Reverend Amy Mildenburg, Boone County Ministerial Association, spoke to the correlation between repealing blue laws, reduced church attendance, and increased alcohol and drug use by formerly religious people. Jeff Harlow, Pastor, Crossroads Community Church, Kokomo, said that Sunday precedes the work week, making people vulnerable and liable to binge, so allowing Sunday sales would remove protections from the most vulnerable people.

Mr. Clarke Kahlo, Greater Broad Ripple Community Coalition, said that the proliferation of late night bars in Broad Ripple has resulted in significant social disruption and high social, personal, and public costs.

Ms. Lisa Hutcheson said, in written testimony, that increased hours and days of sale will increase minors' access to alcohol. Minors purchase and steal alcohol from commercial sources. Ms. Hutcheson said the most recent Survey for Alcohol Compliance data shows that the current alcohol retail environment has a 30% non-compliance rate.

Mr. Michael Lockard, Westside Improvement Association, Evansville, disagreed with Dr. Hanson and supported the validity of the 1995 New Mexico study. Mr. Lockard discussed the link between alcohol use, traffic crashes, and crime. Mr. Lockard said that \$450 million in medical costs and loss of work costs can be attributed to underage drinking in Indiana.

The Committee received written information Ms. Nancy Beals, Mr. Michael Lockard, and Ms. Lisa Hutcheson regarding the link between alcohol availability and traffic crashes, crimes, underage drinking, and alcohol abuse.

### **October 20, 2009 meeting**

#### **(1) Expanding cold beer sales by vendors other than liquor stores**

#### **Current law**

IC 7.1 allows package liquor stores to sell cold beer and does not allow other dealer establishments (grocery stores, and drug stores) to sell cold beer.



## **Increased access and underage and binge drinking**

Ms. Lisa Hutcheson said that underage drinking is already a problem in Indiana that would be made worse by increasing the sales outlets for cold beer. She said that beer is the most widely consumed beverage for underage drinkers and the preferred drink of adult binge drinkers. Ms. Hutcheson reported that 35% of retail establishments failed the ATC's compliance checks.

Mr. Andrew Sprock, Madison County Program Director, Strategic Prevention Framework State Incentive Grant, said that approximately one in three students drink on a regular basis by the time they are in high school. Mr. Sprock reported that 49% of the compliance checks done by the ATC have resulted in the sale of alcohol to a minor. Mr. Sprock said that research shows that the portion of the brain dealing with risk taking develops before the portion of the brain dealing with judgment and second thought. Cold beer is a convenience item for an impulsive purchase.

Major Mark Bowen, Hamilton County Sheriff's Department said that 17,000 people die each year in alcohol related crashes nationally and that intoxication is the number one crime of those incarcerated in the Hamilton County jail. He said that expanding cold beer sales is more convenient for people, which means that more people will drink and drive.

Ms. Nancy Beals said that alcohol and substance abuse are costly due to the services needed to deal with the aftermath. She reported that In 2007, Indiana had 9,942 alcohol-related crashes, resulting in 232 deaths, 532 incapacitating injuries, 3,025 injuries and 6,153 incidents of property damage and in 2005, underage drinking cost \$1.3 billion in medical care, work loss, property damage, fetal alcohol syndrome, and treatment.

Ms. Mary Walker, Marion County Alliance of Neighborhood Associations, said that if other vendors want to sell cold beer, they should have to abide by the same constraints as package liquor stores including quotas, permit cost, separation of product, age and training of servers, limitations on the type and number of non-alcoholic products that can be sold.

Mr. Michael Osborne, chaplain, discussed his experiences in dealing with parents and families of teenagers who have died in traffic accidents. He said that package liquor stores, unlike grocery and drug stores, keep track of who is purchasing alcohol.

## **Cold beer sales and package liquor stores**

Mr. Marc Carmichael said that cold beer sales have caused package liquor store permits to be sold at a premium. He said that allowing other stores to sell cold beer would decimate the package liquor stores in Indiana.

Mr. Jim Purucker said that package liquor stores provide consumers with a wide choice of products. Expansion of cold beer sales would either force out package liquor stores or package liquor stores would be forced to be like grocery stores.

Mr. John Livengood, Indiana Association of Beverage Retailers, said that alcohol should be sold in an age restricted environment. By expanding cold beer sales it would expand the sale

of cold beer to 2300 additional outlets that are not age-restricted and destroy package liquor stores and the public policy they were founded on. He said that only package liquor stores support mandatory server training, clerk's licensing, adult clerks, and age-restricted marketing.

Mr. Ray Cox, Elite Beverages, said that expansion of cold beer sales would increase the number of outlets that sell cold beer, thereby diluting the volume of cold beer sold by each store, and destroying the package liquor stores. Mr. Cox said that of those states that have "wide-open sales", many don't have a package liquor store industry. Mr. Cox said that one of the benefits of package stores is that they offer a wide selection of products to the consumer.

### **Expanding sales increases consumer choice**

Mr. Matt Norris said that expanding cold beer sales to grocery, drug, and convenience stores would provide more options for consumers. Mr. Chuck Taylor, Jr., CEO Taylor Oil, Inc., said that the issue of cold beer sales is not about expanding the number of sales outlets for beer, but about the temperature at which beer is sold. Mr. Taylor said that a two year study by the ATC showed that package liquor stores sold to minors 40% of the time, almost double the rate of noncompliance by drug, grocery, and convenience stores. Mr. Taylor said that it is absurd that Indiana law gives the retailer most likely to sell to minors the exclusive right to sell cold beer.

Ms. Maggie McShane, Indiana Petroleum Council, read a letter submitted to the Committee from Mr. A.R. Kenney, President of Speedway SuperAmerica, LLC. Mr. Kenney said that Indiana is the only state in which his corporation conducts business that forbids the sale of cold beer at grocery stores and convenience stores that are otherwise able to sell warm beer. Mr. Kenney said that his corporation supported programs for compliance checks and that customers familiar with surrounding states say they want one-stop convenience shopping.

### **Differential pricing for cold beer**

Mr. Matt Norris discussed the difference in cold and warm beer prices, showing an average 92 cent difference between the price of a case of warm beer and a case of cold beer. Mr. Norris said that retailers can charge what they want for cold beer based upon the competition in the area.

### **(2) Establishing procedures for allowing direct wine shipments to consumers from Indiana wine sellers and establishing procedures for allowing out of state wine sellers to ship wine, pre-purchased by an Indiana consumer, to an Indiana vendor for delivery to the Indiana consumer.**

### **Direct wine shipment and underage drinking**

Ms. Lisa Hutcheson said that 8.3% of underage college students drink wine. She said that her organization supports the face to face requirement and legislation that would require purchasers who order wine from a winery to take delivery of it at a package liquor store. Ms.

Hutcheson said there should be home delivery guidelines, such as labeling that identifies that the package contains alcohol, requiring a signature and ID check, and maintenance of alcohol sales records by those vendors delivering alcohol.

### **The face to face requirement and third party verification**

Ms. Lisa Hays urged the Committee to review the face to face requirement and consider a third party verification system as an alternative. Ms. Hays discussed how Kansas had a face to face requirement like Indiana and replaced it with a third party verification alternative. Ms. Hays said that Indiana wineries, in-state shipping business has been destroyed while their out of state shipping is growing.

Mr. Jim Purucker discussed *Rowe v. New Hampshire Motor Transport*, a U.S. Supreme Court case regarding shipping of tobacco products, in which the court held that a state can't require a common carrier to check the identification of the person receiving the delivery. He explained how the face to face requirement which was challenged in *Baude v. Heath* was upheld by the 7th Circuit Court of Appeals and was not heard on appeal by the U.S. Supreme Court.

### **Direct shipping by Indiana retailers**

Mr. Jason Flora, attorney, and Mr. Jim Purucker discussed the lawsuit that Cap'n Cork has filed against the ATC, claiming that retailers should be treated the same as wineries and be able to ship alcohol by common carrier. Mr. Purucker said that if Indiana retailers are allowed to ship to consumers, the next round of cases will argue that out of state retailers should be allowed to ship to consumers.

Mr. Andy Lebamoff, Cap'n Cork, explained how Cap'n Cork shipped wine for wine clubs to Indiana residents using a common carrier. He explained that a consumer would go to a winery and order wine, the wine would then be shipped to a wholesaler, delivered to Cap'n Cork, and then shipped via UPS to the consumer. Mr. Lebamoff said that if someone ordered wine over the Internet, the face to face requirement would not be fulfilled, because the wine would go directly from the winery to UPS. Mr. Lebamoff said that even a face to face requirement, doesn't ensure that the same person who did the face to face transaction will be the same person who accepts the delivery.

Mr. John Livengood said that his organization supports the legislation that was proposed in the past allowing a consumer to pick up out of state shipments of wine at package liquor stores.

### **(3) Allowing gourmet wine shops to provide wine sampling**

Ms. Ashley Lockwood, Cork'n Cracker, explained that she operates two gourmet wine shops under grocery store permits. Ms. Lockwood said that there should be a separate permit for gourmet wine shops and these gourmet wine shops, not grocery stores, should be allowed to conduct wine samplings. She discussed how food sampling increases sales and sales tax.

Mr. Randy Miller, Drug Free Marion County, said that if wine samplings are allowed in gourmet wine shops, the following safeguards should be in place: (1) these shops should meet all requirements for alcohol sales; (2) the shop should be accessible only to those 21 years of age or older; (3) samplings should be limited by amount and length of time; (4) staff should have training and licenses to serve; and (5) there should be licensing requirements for shops holding samplings.

Mr. Brad Rider, President and CEO of United Package Liquors, said that gourmet grocery stores carry the same products as liquor stores but are not held to the same standards. Mr. Rider said that if these gourmet shops are allowed to do tastings, other grocery and convenience stores will ask to do the same thing.

Sen. Alting clarified that the intent behind including this issue on the agenda was to see if the legislature could help these small gourmet wine shop businesses grow and not to expand tastings to the big box or grocery stores.

#### **(4) Additional permits for additional warehouses of beer wholesalers**

##### **Current law**

IC 7.1 allows a beer wholesaler to have only one wholesaler permit and one warehouse.

##### **Uniform law for beer/wine wholesalers and spirit/wine wholesalers**

Mr. Phil Terry said the law as to beer/wine wholesalers and spirit/wine wholesalers needs to be the same. This would mean that beer/wine wholesalers would be able to have multiple permits, multiple locations, and sell liquor, the same as spirit/wine wholesalers. In turn, spirit/wine wholesalers would be able to sell beer and have franchise protection, the same as beer/wine wholesalers. Mr. Terry said that since wine wholesalers can already sell liquor, beer wholesalers can't compete unless they can sell spirits as well. He said the intent of this proposed change is not to take business from others, but to protect what they have. The anti-trust laws and the fact that it is not a practical business practice would prevent predatory pricing. Mr. Terry said that the purpose behind separation of beer wholesalers and liquor wholesalers-- the belief that the more actors involved in the system the better, and the more separation between tiers the better-- doesn't remain because the number of wholesalers has diminished.

##### **Negative effect on other wholesalers**

Mr. Jim Purucker said that beer/wine wholesalers like Monarch Beverage would have a huge advantage in competing with spirit/wine wholesalers by using their franchise protected beer territories. Marc Carmichael said that the number of beer wholesalers has been reduced from over 200 in 1968 to 30 today. Mr. Carmichael said that if Monarch Beverage had more than one warehouse, it would wipe out the other competition and further reduce the number of wholesalers. In his written testimony, Mr. Carmichael said that allowing beer wholesalers to have multiple permits (not just multiple satellite locations) would allow the wholesaler to have

multiple price sheets and charge some customers more than others.

**(5) Limitations on the amount of alcoholic beverages that may be purchased at the point of sale for carryout or delivery**

Rep. Van Haaften explained that this issue was being discussed as a favor to Rep. Noe, and since it was not a part of the Committee charges, the Committee would not consider findings and recommendations on this topic for the final report. Since Rep. Noe could not be present at the meeting, she submitted to the Committee a memo regarding the topic. In her memo, Representative Noe discussed how IC 7.1 limits in differing quantities the amount of alcohol that a customer can purchase from a dealer.

**Purpose behind quantity limitations**

Mr. John Livengood said that quantity limitations are consistent with the purpose of IC 7.1 and are tailored to each business. The legislature didn't think that grocery stores would be selling mass quantities of alcohol and they don't want grocery stores doing what wholesalers do. He said that package stores are allowed to sell larger quantities to compensate in part for the other limitations placed upon them.

**Underage drinking**

Mr. Scott Allen, Underage and Binge Drinking Prevention Initiative, said that in 2006, there were 207 DUI arrests of juveniles in Marion County, constituting 6% of total arrests that year. He said that 50% of Marion County eighth graders admit to consuming alcohol, compared to a rate of 46% for the state and a rate of 70% on average by the time they reach high school age. Mr. Allen said that package liquor stores, unlike other dealers, track large quantity shipments.

Ms. Jerry Lerch, Drug and Alcohol Consortium of Allen County, said that her organization supports limits on casual purchases and expanded reporting on large alcohol purchases. Ms. Lerch provided the Committee with statistics on underage drinking, stating that: (1) half of the population that is 12 years of age and older used alcohol in the past month; (2) 20% of the population that is 12 years of age and older have binged on alcohol during the previous 30 day period; and (2) one-fourth of Indiana high school students rode with someone who was drinking.

**V. COMMITTEE FINDINGS AND RECOMMENDATIONS**

The 2008 interim Committee had no findings or recommendations.

Legislative Council Resolution 09-02, SECTION 11 states "a study committee may not recommend a final bill draft, or a final report, unless that draft or report has been approved by a majority of the voting members appointed to serve on that committee." Since the Committee has 12 voting members, it takes an affirmative vote of at least seven members to satisfy this requirement.

The 2009 interim Committee made the following findings and recommendations:

(1) Introductory Finding and Recommendation

The Committee adopted the following finding and recommendation by a vote of 11 to 0:

In 1973, the Indiana General Assembly set forth the general purpose of Indiana's alcohol-related laws in I.C. 7.1-1-1-1 as the following:

- (1) To protect the economic welfare, health, peace, and morals of the people of this state.
- (2) To regulate and limit the manufacture, sale, possession, and use of alcohol and alcoholic beverages.
- (3) To regulate the sale, possession, and distribution of tobacco products.
- (4) To provide for the raising of revenue.

Since the formation of these principles in 1973, Indiana's alcohol laws have demonstrated a "consistency of inconsistency" whereby alcohol policy has been driven by the monetary gains or losses of varying sectors within the three-tier system as opposed to maintenance of a uniform regulatory policy consistent with the general purposes enacted in 1973.

The Committee recommends no issue amending, repealing or otherwise changing Title 7.1 be considered by the Indiana General Assembly for passage into law without deliberation and consideration as to whether such amendment, repeal or change serves the general purposes of I.C. 7.1-1-1-1.

(2) Alcohol server training and employee permits for sales clerks in dealer establishments.

The Committee adopted the following recommendation by a vote of 8 to 3:

The Committee finds the best practice for preventing the sale of alcohol to minors is to require all sales of alcohol for off-premises consumption to be made only after a sales clerk has verified the purchaser's age by means of photo identification.

(3) Sunday sales

The Committee adopted the following recommendation by a vote of 7 to 4:

The Committee recommends to the General Assembly that carry out sales of alcoholic beverages should not be allowed on Sundays.

(4) Cold beer sales

The Committee adopted the following recommendation by a vote of 11 to 0:

The Committee recommends to the General Assembly that only package liquor stores should be allowed to sell cold beer.

(5) Sale of alcohol on election days.

The Committee adopted the following finding and recommendation by a vote of 11 to 0:

The Committee finds Indiana's manner of conducting elections has changed substantially in the recent years. Voters are now able to cast votes during 5 types of elections: 1) General elections; 2) municipal elections; 3) primary elections; 4) school district elections; and 5) special elections. Votes are cast prior to the date of an election by absentee ballots, at satellite voting locations, and in person at government offices.

Furthermore, Indiana's alcohol laws (IC 7.1-5-10-1) do not specifically address a prohibition against the sale of alcohol during school district elections and special elections. This absence has resulted in the ATC being left without statutory direction on the enforcement of alcohol sales during such elections.

Therefore, it is recommended legislative action be taken to provide consistency in the sale of alcohol by eliminating the prohibition of the sale of alcohol on dates or hours an election of any manner is taking place in Indiana.

(6) Implementing uniform closing hours for each day of the week.

The Committee adopted the following recommendation by a vote of 11 to 0:

The Committee recommends to the General Assembly that all retailers (bars, restaurants) should have a uniform closing hour of 3 a.m. all days of the week.

(7) Allowing gourmet wine shops to provide wine sampling

The Committee adopted the following by a vote of 8 to 3:

Indiana law does not currently recognize a "gourmet wine shop. Therefore, the Committee can make no recommendation regarding whether wine sampling should or should not be allowed.

## WITNESS LIST

Mr. Scott Allen, Underage and Binge Drinking Prevention Initiative

Ms. Nancy Beals, Drug Free Marion County

Mr. Fred Biesecker, Ice Miller

Senator Phil Boots

Major Mark Bowen, Hamilton County Sheriff's Department

Mr. Matt Brase, Indiana Association of Cities and Towns

Mr. Phil Burton, Drug Free Marion County and Advisory Council Underage and Binge Drinking

Mr. Marc Carmichael, Indiana Beverage Alliance

Mr. Chris Clifford, Harry and Izzy's Restaurant

Ms. Rhonda Cook, Indiana Association of Cities and Towns

Mr. Jerry Corliss, Chalet Party Shoppe

Mr. Lewis Coulter, Indiana Licensed Beverage Association

Ray Cox, Elite Beverages

Mr. Ronald Culp, Elmwood Liquors

Mr. Rick Dickman, Town of Clarksville

Mr. Ed Dunsmore, Alcohol and Tobacco Commission

Mr. Mark Easley, Easley Winery

Mr. Jeff Eaton, Barley Island Brewing Company, and Brewers of Indiana Guild

Mr. John Elliott, Kroger Central Division

Mr. Greg Emig, Lafayette Brewing Company, and Brewers of Indiana Guild

Ms. Pamela S. Erickson, Public Action Management



Jason Flora, attorney

Rep. Craig Fry

Ms. Tanya Galbraith, Town of McCordsville

Mr. Gregory T. Genrich

Dr. David J. Hanson, Ph.D., State University of New York, Potsdam

Mr. Kenneth Harker, Jr., VinSense Inc.

Rev. Jeff Harlow, Crossroads Community Church, Kokomo

Mr. Tom Hastings, Indiana Trial Lawyers Association

Ms. Lisa Hays, Indiana Wine and Vineyard Association

Mr. David Heath, Chairman, Alcohol and Tobacco Commission

Mr. John Hill, Broadripple Brewpub, and Brewers of Indiana Guild

Mr. Mike Hocker, Evansville

Mr. Richard P. Hofstetter, VinSense Inc.

Mr. Alex Huskey, Indiana State Excise Police

Ms. Lisa Hutcheson, Indiana Coalition to Reduce Underage Drinking

Mr. Greg Isgrigg, Town of Clarksville

Mr. Penn Jensen, Upland Brewing Company, and Brewers of Indiana Guild

Mr. Clarke Kahlo, Greater Broad Ripple Community Coalition

Mr. John Keeler, representing the Wine Institute

A.R. Kenney, President of Speedway SuperAmerica, LLC.

Mr. Jim Killen

Mr. Tom Klein, Town of Avon

Mr. Joe Lackey, Indiana Grocery and Convenience Store Association

Andy Lebamoff, Cap'n Cork

Jerry Lerch, Drug and Alcohol Consortium of Allen County

Mr. John Livengood, Restaurant and Hospitality Association of Indiana, and Association of Beverage Retailers

Mr. Michael Lockard, Westside Improvement Association, Evansville

Ashley Lockwood, Cork'n Cracker,

Ms. Tammy Loew, Indiana Coalition to Reduce Underage Drinking

Mr. Don Marquardt, Indiana Licensed Beverage Association

Mr. Jeffrey McKean, McKean Law Firm

Mr. J. Lee McNeely

Maggie McShane, Indiana Petroleum Council

Mr. Allen Messer, Illinois Casualty Co.

Ms. Karen Michler, Drug Free Tippecanoe County

Reverend Amy Mildenburg, Boone County Ministerial Association

Randy Miller, Drug Free Marion County

Mr. Ted Miller, Brugge Brasserie, and Brewers of Indiana Guild

Mr. Grant Monahan, Indiana Retail Council, Inc.

Mr. Matt Murphy, City of Valparaiso

Rep. Cindy Noe

Mr. Matt Norris, Hoosiers for Beverage Choices

Mr. Allen Dale Olson, VinSense, Inc.

Michael Osborne, chaplain

Mr. Mark Palmer, Taft Stettinius & Hollister LLP, representing Al Krygier, Schererville

Mr. Douglas Pendleton, Grapevine Cottage

Mr. Jim Purucker, Wine and Spirit Wholesalers of Indiana

Brad Rider, United Package Liquors

Mr. Larry Satek, Satek Winery

Mr. Warren R. Scheidt, Indiana Association of Beverage Retailers

Mr. John Sinder, Crown Liquors

Mr. Thomas Snow, Chairman, Alcohol and Tobacco Commission

Ms. Elizabeth Spiller

Andrew Sprock, Strategic Prevention Framework State Incentive Grant

Mr. Bob Super, Precision Development, LLC

Mr. Phil Terry, Monarch Beverage Company

Dr. Thomas Van Horn, City of Lafayette

Mary Walker, Marion County Alliance of Neighborhood Associations

Mr. Chris Ward, Lawrence, Indiana

Mr. Mark Webb, representing Brewers of Indiana Guild

Dr. Sigurd Zielke, Fairbanks Hospital

Mr. Randy Zion